

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2014-346-WS

IN RE:)	DIUC MEMORANDUM
)	SUMMARIZING MATTERS TO BE
Application of Daufuskie Island Utility)	ADDRESSED ON REMAND
Company, Inc. for Approval of an)	
Adjustment for Water and Sewer Rates,)	
Terms and Conditions.)	
_____)	

STATEMENT OF ISSUES BEFORE THE COMMISSION

1. Order 2015-846 Approving the ORS-POA Settlement and Order 2018-68 on Rehearing both erroneously excluded \$699,631 from DIUC's Utility Plant In Service. More recently, Order 2018-68 purports to rely on ORS testimony but ORS never identified the specific items of plant for the \$699,631. The Commission could not have determined from Audit Exhibit ICG-5 (admitted as Hearing Ex. 18 and Rehearing Ex. 8) or from anything anywhere in the record what items of plant ORS adjusted for "non-allowable plant" or what costs ORS adjusted for "non-allowable plant." Further, DIUC presented testimony regarding the historical facts and accounting basis for its books and records. As such, the excluded \$699,631 worth of DIUC plant assets should be included in DIUC's Utility Plant In Service in accordance with the documentation and testimony in the record from DIUC.
2. Order 2015-846 permitted DIUC to recover Rate Case Expenses for rate case work of its manager, Guastella Associates ("GA"). Based on the existing record, the Commission should apply the same standard thereby including Rate Case Expenses for GA fees incurred through September 30, 2017, up to a total revenue increase not to exceed the noticed 108.9% rate increase. Remaining invoiced fees to GA could be presented for consideration as part of DIUC's next rate proceeding.¹

¹ Inclusion of \$269,356 for GA fees incurred through September 30, 2017. That would leave outstanding about one-half of the \$541,738 of GA fees invoiced through September 30, 2017, or \$273,662, to be recovered in a subsequent rate proceeding.

DISCUSSION OF THE TWO SUPREME COURT APPEALS

In the first appeal, DIUC asked the Supreme Court to consider Order 2015-846's adoption of the ORS-Intervenors Settlement Agreement and five specific adjustments the Commission included by adopting the Settlement Agreement. The multiple adjustments on appeal were Order 2015-846's adjustments to:

- Property Taxes;
- Plant In Service;
- Bad Debts;
- Management Fees; and
- Rate Case Expenses.²

After review of the briefing and oral argument, the Supreme Court ruled Order 2015-846 “contained multiple adjustments which were entirely unsupported by the evidence presented to the Commission.” *DIUC v. S.C. Office Reg Staff*, 420 S.C. 305, 316, 803 S.E.2d 280, 286 (2017). Accordingly, the Court reversed and remanded the matter “for a new hearing as to all issues.” *Id.* The Court further explained, “While we are reversing and remanding for a new hearing as to all issues, in order to provide guidance to the Commission on remand, we address three allegations of error raised by DIUC in this appeal.” *Id.*

The three allegations resolved by the Court were:

- Bad Debt Adjustment (finding it was “unsupported by the evidence in the record”);
- Portion of Adjustment to DIUC's Utility Plant In Service by the value of the equipment on the Elevated Tank Site (finding it was

² The Supreme Court framed the issue as: “Were the Commission's findings of fact and conclusions with respect to property taxes, management fees, rate case expenses, rate base, and bad debt supported by substantial evidence in the record?” *DIUC I*, 420 S.C. 305, 313, 803 S.E.2d 280, 284 (2017).

- “unsupported by the substantial evidence in the record”); and
- Property Tax Adjustment disallowing amounts required by DIUC’s agreement with Beaufort County (finding the taxes should be recovered as “significant known expenses incurring after the test year”).

DIUC I, 420 S.C. 305, 803 S.E.2d 280 (2017).

On remand to the Commission, the parties asserted different positions regarding how the Commission should address rehearing. With regard to the Utility Plant In Service, DIUC suggested the Commission adopt the Supreme Court’s ruling as to inclusion of the Elevated Tank Site. DIUC stated:

No additional testimony or discovery on the Elevated Tank Site and associated equipment is necessary, except to summarize for the Commission the amounts to be included under the Supreme Court’s ruling that the Elevated Tank Site and associated equipment must be included in calculating Plant in Service.

Applicant’s Proposal for Procedure Following Remand (Docket #272433, filed October 4, 2017).

With regard to the other items excluded from Utility Plant In Service in Order 2015-846 but that were not specifically ruled upon by the Court, DIUC stated:

Beyond its holding as to the Elevated Tank Site, the Supreme Court did not specifically address that Order 2015-846’s adoption of ORS’s downward adjustment of Plant In Service included more than just the value of the Elevated Tank Site; the adjustment also reflects “capital improvements, non-allowable plant, adjustments from the previous case not made by DIUC and retirements through July 31, 2015.” Hearing Tr. at 496. However, ORS (and therefore Order 2015-846) never explained what amount was included for the Elevated Tank Site versus these other items. DIUC intends to present limited prefiled testimony addressing this issue, which was also the subject of ample testimony by DIUC in the initial proceeding.

Id. DIUC also requested that no rehearing discovery be conducted.

The Intervenors endorsed a broader scope for the rehearing and discovery, as explained by Order No. 2017-59-H, wherein Hearing Officer Butler wrote:

In contrast, counsel for the Intervenor Property Owners Associations referred to the “de novo” language of the Supreme Court opinion, and stated his belief that the Court intended that the Commission hold a new hearing on all issues. This belief is

indeed specifically stated by the Court in the Court's opinion contained under heading 8 in the Court's written opinion. *See Daufuskie Island Utility Company, Inc. v. South Carolina Office of Regulatory Staff*, 803 S.E. 2d 280 (2017). The Standing Hearing Officer concludes, based on the language in the opinion of the Supreme Court, that the "de novo" terminology clearly means that the Court intended that the Commission hold a new hearing on all issues in the case. Further, since the Commission will hold a new hearing on all such issues, the Commission's discovery rules are clearly applicable.

Order 2017-59-H (Docket # 272504, October 11, 2017).

Pursuant to Order 2017-59-H, the parties participated in discovery and prepared for a de novo rehearing. That rehearing was convened before the Commission on December 6, 2017. Following rehearing the parties submitted proposed orders and on January 31, 2018, the Commission entered its decision, docketed as Order No. 2018-68 ("Order on Rehearing"). DIUC filed a timely Petition for Reconsideration and/or Rehearing on February 20, 2018. DIUC asserted that although the Order on Rehearing addressed many of the complex issues presented in this case and significantly reduced the outstanding questions, the Commission erred in its downward adjustment to DIUC's proposed Rate Case Expenses, Rate Base/Utility Plant In Service, and Accumulated Depreciation/Depreciation Expense. *See* DIUC's Petition for Reconsideration of Order on Rehearing (Docket #274560, February 20, 2018). By Order No. 2018-346 dated May 16, 2018, the Commission denied DIUC's Petition for Reconsideration.

On June 13, 2018, DIUC served its Notice of Appeal of Order No. 2018-68 and Order No. 2018-346. The Office of the Clerk of the Supreme Court assigned this second appeal Appellate Case No. 2018-001107. As set forth in Appellant's Brief, DIUC sought "reversal of the Commission's Order on Rehearing because the Commission erred in excluding \$542,978 from DIUC's Rate Case Expenses and the Commission erred in removing \$699,631 from DIUC's Rate Base/Utility Plant In Service." Appellant's Brief at 3 (Case No. 2018-001107).

Oral argument was held before the Supreme Court on April 18, 2019. At oral argument

counsel was questioned by members of the Court regarding both issues on appeal – the Order on Rehearing’s exclusion of Rate Case Expenses and the Order on Rehearing’s reduction to Utility Plant In Service. *See* Video Recording of April 18, 2019, Oral Arguments (available online at <http://media.sccourts.org/videos/2018-001107.mp4>).

On July 27, 2019, the Supreme Court entered its decision reversing and remanding the matter back to the Commission. *See DIUC v. S.C. Office Reg Staff*, 427 S.C. 458, 463, 832 S.E.2d 572, 574-5 (2019), *reh'g denied* (Sept. 27, 2019) (“DIUC's rate application will now go before the commission for a third hearing.”). In ruling for DIUC the Court discussed the evidence in the record and also provided broad considerations to be addressed on remand. For example, the Court instructed that “in scrutinizing the evidence during a ratemaking proceeding, the commission should evaluate the evidence in accordance with objective and consistent standards.” *DIUC II*, 427 S.C. at 463, 832 S.E.2d at 574-5.

The Intervenors and ORS filed separate petitions for rehearing. The Supreme Court denied both petitions ruling:

After careful consideration of the petitions for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petitions for rehearing are denied.

DIUC v. S.C. Office Reg Staff, Appellate Case No. 2018-001107, Order Denying Petitions for Rehearing (September 27, 2019).

Via letter dated November 15, 2019, DIUC informed the Commission of the Remittitur entered by the Supreme Court and the Court’s reversal of Order 2018-68. DIUC requested the Commission schedule a limited hearing for oral argument from the parties regarding implementation of the Supreme Court’s decision. *See* Letter Requesting Rehearing (Docket #288562, November 15, 2019).

CONCLUSION

A hearing is scheduled for January 21, 2020. As set forth above, there are two issues for Commission consideration -- the same two issues raised by DIUC's most recent appeal, which the Supreme Court has ruled should be considered in a third hearing wherein the Commission is to "evaluate the evidence and carry out [its] important responsibilities consistently, within the 'objective and measurable framework' the law provides." *DIUC II*, 427 S.C. at 464, 832 S.E.2d at 575.

DIUC respectfully requests the Commission proceed with the hearing on the extensive record already in place for this case to consider new findings as to DIUC's Rate Case Expenses and Utility Plant In Service and then allow the parties to submit proposed orders addressing the adjustments and how to implement the resulting rates.

Respectfully submitted,

/s/ Thomas P. Gressette, Jr.

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January 16, 2020
Charleston, South Carolina

CERTIFICATE OF SERVICE

This is to certify that on January 16, 2020, I caused to be served upon the counsel of record named below a copy of the foregoing **DIUC MEMORANDUM SUMMARIZING MATTERS TO BE ADDRESSED ON REMAND** electronic mail, as indicated. A copy was also electronically filed via the Commission DMS.

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